REMARKS

Applicants will address each of the Examiner's objections and rejections in the order in which they appear in the Office Action of December 2, 2003.

Election/Restrictions

The Examiner objects to Claims 41, 45 and 46 as being directed to a non-elected species. Accordingly, Applicants are canceling these claims without prejudice to filing a divisional application thereon.

Claim Rejections - 35 USC §112

The Examiner also objects to Claims 33 and 34 under 35 USC §112, second paragraph, for informalities therein. In particular, the Examiner states that there is insufficient antecedent basis for the limitation "the treating element" in these claims.

This rejection is not understood. Claims 33 and 34 are dependent on Claim 29 which provides an antecedent basis for this element. Accordingly, it is requesting that this objection be withdrawn.

Claim Rejections - 35 USC §102

Claims 29-34, 35, 37, 42, 43, 44, 47, 48 and 49

The Examiner rejects Claims 29-34, 35, 37, 42, 43, 44, 47, 48 and 49 under 35 USC §102 as being anticipated by Nita. This rejection is respectfully traversed.

Applicants have amended Claim 29 herewith to clarify the structure being claimed. Independent Claim 29 requires that the space comprising a fluid return lumen be in fluid communication with an opening in the lumen of the first elongated tube at the distal end of the first elongated tube. Such a feature is clearly not disclosed or suggested by Nita.

The Examiner contends that the first lumen is reference number 24 in Nita while the return lumen is reference number 22. The Examiner then contends while the opening or apertures are not at the distal end of the third tube, the openings are in the middle of the catheter and that satisfies the rejection.

Applicants respectfully disagrees and submits that Nita does not disclose or suggest the claimed invention. The catheter of Claim 29 has a first elongated tube to receive at least one treating element which is movable in the catheter by means of pressurized fluid. As explained in the specification, see e.g. pages 26 and 27 therein, the pressurized fluid is used within the first elongated tube to hydraulically move the treating elements from the proximal end to the distal end of first elongated tube. The fluid exits the distal end of the first elongated tube via an opening or space at the distal end of the first elongated tube and returns via the fluid return lumen. The hydraulic fluid flow is reversed in order to retrieve the treating elements.

Applicants can find no disclosure in Nita of where the distal end of the first elongated tube has an opening in the lumen of the first elongated tube at the distal end of said first elongated tube. In fact, Applicants also cannot find any disclosure in Nita of reference number 22 having an aperture or opening in the middle of the catheter as contended by the Examiner. Even if it had such openings, they would not read on the claimed invention which requires such an opening at the distal end. Further, such openings in the middle of the tube would cause the fluid to flow out of the tube before the treating elements reached the distal end of the tube (since Nita discloses using ultrasound waves,

this is not a concern in Nita). This would prevent the treating elements from reaching the desired area to be treated (which is at the distal end of the tube). This would be counterproductive to treating the patient and could actually be harmful to the patient.

Accordingly, for at least the above-stated reasons, independent Claim 29 and the claims dependent thereon are clearly patentable over the cited reference. Therefore, it is requested that this rejection now be withdrawn.

Claim 44

The Examiner also rejects Claim 44 under 35 USC §102(e) as being anticipated by Yock. This rejection is also respectfully traversed.

For similar reasons as that discussed above for Claim 29, Claim 44 is clearly patentable over the cited reference. Therefore, it is requested that this rejection now be withdrawn.

Double Patenting

The Examiner also rejects Claims 29-34, 35, 37, 42, 43, 44, 47, 48 and 49 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 6, 7, 8, 10, 11, 12, 17, 19, 20, 22, 35 of US Patent 5,899,882. This rejection is respectfully traversed.

Applicants respectfully submit that the claims are not claiming the same subject matter. For example, claim 1 of the '882 patent requires a balloon. Such a balloon is not required in Claim 29 of the present application. Hence, different subject matter is being claimed.

Therefore, it is requested that this rejection be withdrawn.

Conclusion

Therefore, for at least the above-stated reasons, the present application is now in an allowable condition and should be allowed.

If any further fee is due for this amendment, please charge our deposit account 50/1039.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,

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